

2SSB 5773 - S AMD 358
By Senator Parlette

NOT ADOPTED 03/15/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
4 as follows:

5 (1) Except as otherwise provided in this section, every person
6 furnishing professional services, materials, or equipment for the
7 improvement of real property shall give the owner or reputed owner
8 notice in writing of the right to claim a lien. If the prime
9 contractor is in compliance with the requirements of RCW 19.27.095,
10 60.04.230, and 60.04.261, this notice shall also be given to the prime
11 contractor as described in this subsection unless the potential lien
12 claimant has contracted directly with the prime contractor. The notice
13 may be given at any time but only protects the right to claim a lien
14 for professional services, materials, or equipment supplied after the
15 date which is sixty days before:

16 (a) Mailing the notice by certified or registered mail to the owner
17 or reputed owner; or

18 (b) Delivering or serving the notice personally upon the owner or
19 reputed owner and obtaining evidence of delivery in the form of a
20 receipt or other (~~acknowledgement~~) acknowledgment signed by the owner
21 or reputed owner or an affidavit of service.

22 In the case of new construction, repair, alteration, or remodel of
23 a single-family residence or appurtenant garage for a residential
24 homeowner, the notice of a right to claim a lien may be given at any
25 time but only protects the right to claim a lien for professional
26 services, materials, or equipment supplied after (~~a date which is ten~~
27 ~~days before~~)) the notice is given as described in this subsection.

28 (2) Notices of a right to claim a lien shall not be required of:

29 (a) Persons who contract directly with the owner or the owner's
30 common law agent;

1 (b) Laborers whose claim of lien is based solely on performing
2 labor; or

3 (c) Subcontractors who contract for the improvement of real
4 property directly with the prime contractor, except as provided in
5 subsection (3)(b) of this section.

6 (3)(a) Persons who furnish professional services, materials, or
7 equipment in connection with the new construction, repair, alteration,
8 or remodel of ~~((an existing owner occupied))~~ a single-family residence
9 or appurtenant garage for a residential homeowner:

10 ~~((a))~~ (i) Who contract directly with the ~~((owner occupier or
11 their))~~ owner or the owner's common law agent shall not be required to
12 send a written notice of the right to claim a lien and shall have a
13 lien for the full amount due under their contract, as provided in RCW
14 60.04.021; or

15 ~~((b))~~ (ii) Who do not contract directly with the ~~((owner occupier
16 or their))~~ owner or the owner's common law agent shall give notice of
17 the right to claim a lien to the ~~((owner occupier))~~ owner. Liens of
18 persons furnishing professional services, materials, or equipment who
19 do not contract directly with the ~~((owner occupier or their))~~ owner or
20 the owner's common law agent may only be satisfied from actual amounts
21 designated in the contract for the professional services, materials, or
22 equipment supplied upon which the lien claim is based and not yet paid
23 to the prime contractor by the owner at the time the notice described
24 in this section is received, regardless of whether amounts not yet paid
25 to the prime contractor are due. For lien claims under this subsection
26 (3)(a)(ii) based on new construction, repair, alteration, or remodel of
27 a single-family residence or appurtenant garage for a residential
28 homeowner, recoveries may not exceed ten percent of the total
29 construction contract amount.

30 ~~((For the purposes of this subsection))~~ (b) The definitions in this
31 subsection apply throughout (a)(ii) of this subsection unless the
32 context clearly requires otherwise.

33 (i) "Received" means actual receipt of notice by personal service,
34 or registered or certified mail, or three days after mailing by
35 registered or certified mail, excluding Saturdays, Sundays, or legal
36 holidays.

37 (ii) "Professional services, materials, or equipment supplied" do
38 not include any professional services, materials, or equipment supplied

1 by a subcontractor performing the new construction, repair, alteration,
2 or remodel of a single-family residence or appurtenant garage for a
3 residential homeowner.

4 (4) The notice of right to claim a lien described in subsection (1)
5 of this section, shall include but not be limited to the following
6 information and shall substantially be in the following form, using
7 lower-case and upper-case ten-point type where appropriate.

8 NOTICE TO OWNER

9 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
10 CAREFULLY.

11 PROTECT YOURSELF FROM PAYING TWICE

12 To: Date:

13 Re: (description of property: Street address or general location.)

14 From:

15 AT THE REQUEST OF: (Name of person ordering the professional
16 services, materials, or equipment)

17 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH
18 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:

19 This notice is sent to you to tell you who is providing professional
20 services, materials, or equipment for the improvement of your property
21 and to advise you of the rights of these persons and your
22 responsibilities. Also take note that laborers on your project may
23 claim a lien without sending you a notice.

24 OWNER/OCCUPIER OF EXISTING
25 RESIDENTIAL PROPERTY AND/OR
26 NEW RESIDENTIAL PROPERTY

27 Under Washington law, those who furnish labor, professional services,
28 materials, or equipment for the repair, remodel, or alteration of your
29 owner-occupied principal residence and who are not paid, have a right
30 to enforce their claim for payment against your property. This claim
31 is known as a construction lien.

32 The law limits the amount that a lien claimant can claim against your
33 property. If the improvement to your property is the new construction,
34 repair, alteration, or remodel of a single-family residence or

1 appurtenant garage for a residential homeowner, a lien may be claimed
2 for all professional services, materials, or equipment furnished after
3 the date this notice was given to you or mailed to you. Claims may
4 only be made against that portion of the contract price you have not
5 yet paid to your prime contractor as of the time this notice was given
6 to you or three days after this notice was mailed to you. Review the
7 back of this notice for more information and ways to avoid lien claims.

8 COMMERCIAL ((~~AND/OR NEW~~
9 RESIDENTIAL)) PROPERTY

10 We have or will be providing professional services, materials, or
11 equipment for the improvement of your commercial ((~~or new residential~~))
12 project. In the event you or your contractor fail to pay us, we may
13 file a lien against your property. A lien may be claimed for all
14 professional services, materials, or equipment furnished after a date
15 that is sixty days before this notice was given to you or mailed to
16 you((~~, unless the improvement to your property is the construction of~~
17 ~~a new single family residence, then ten days before this notice was~~
18 ~~given to you or mailed to you~~)).

19 Sender:
20 Address:
21 Telephone:

22 Brief description of professional services, materials, or equipment
23 provided or to be provided:

24 IMPORTANT INFORMATION
25 ON REVERSE SIDE

26 IMPORTANT INFORMATION
27 FOR YOUR PROTECTION

28 This notice is sent to inform you that we have or will provide
29 professional services, materials, or equipment for the improvement of
30 your property. We expect to be paid by the person who ordered our
31 services, but if we are not paid, we have the right to enforce our
32 claim by filing a construction lien against your property.

33 LEARN more about the lien laws and the meaning of this notice by
34 discussing them with your contractor, suppliers, Department of Labor
35 and Industries, the firm sending you this notice, your lender, or your
36 attorney.

1 COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods
2 available to protect your property from construction liens. The
3 following are two of the more commonly used methods.

4 DUAL PAYCHECKS (Joint Checks): When paying your contractor for
5 services or materials, you may make checks payable jointly to
6 the contractor and the firms furnishing you this notice.

7 LIEN RELEASES: You may require your contractor to provide lien
8 releases signed by all the suppliers and subcontractors from
9 whom you have received this notice. If they cannot obtain lien
10 releases because you have not paid them, you may use the dual
11 payee check method to protect yourself.

12 YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

13 YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW
14 TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT
15 RECEIVED IT, ASK THEM FOR IT.

16 * * * * *

17 (5) Every potential lien claimant providing professional services
18 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
19 commenced, and the professional services provided are not visible from
20 an inspection of the real property may record in the real property
21 records of the county where the property is located a notice which
22 shall contain the professional service provider's name, address,
23 telephone number, legal description of the property, the owner or
24 reputed owner's name, and the general nature of the professional
25 services provided. If such notice is not recorded, the lien claimed
26 shall be subordinate to the interest of any subsequent mortgagee and
27 invalid as to the interest of any subsequent purchaser if the mortgagee
28 or purchaser acts in good faith and for a valuable consideration
29 acquires an interest in the property prior to the commencement of an
30 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of
31 the professional services being provided. The notice described in this
32 subsection shall be substantially in the following form:

33 NOTICE OF FURNISHING
34 PROFESSIONAL SERVICES

1 That on the ____ (day) ____ day of ____ (month and year) ____, ____ (name of
2 provider) ____ began providing professional services upon or for the
3 improvement of real property legally described as follows:

4 [Legal Description
5 is mandatory]

6 The general nature of the professional services provided is . . .
7 The owner or reputed owner of the real property is
8

9

10 (Signature)

11

12 (Name of Claimant)

13

14 (Street Address)

15

16 (City, State, Zip Code)

17

18 (Phone Number)

19 (6) A lien authorized by this chapter shall not be enforced unless
20 the lien claimant has complied with the applicable provisions of this
21 section.

22 (7) The definitions in this subsection apply throughout this
23 section unless the context clearly requires otherwise.

24 (a) "Commercial property" includes residential property that is not
25 owned by a residential homeowner.

26 (b) "Residential homeowner" means the owner or potential owner that
27 occupies or will occupy a single-family residence at the completion of
28 the new construction, repair, alteration, or remodel of the single-
29 family residence or appurtenant garage as his or her residence.

30 **Sec. 2.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read
31 as follows:

32 (1) Except as provided in subsection (2) of this section and RCW
33 60.04.031, any person furnishing labor, professional services,
34 materials, or equipment for the improvement of real property shall have

1 a lien upon the improvement for the contract price of labor,
2 professional services, materials, or equipment furnished at the
3 instance of the owner, or the agent or construction agent of the owner.

4 (2) If a potential lien claimant knew or should have known that a
5 prime residential contractor had been the prime residential contractor
6 or construction agent on a single-family residential improvement
7 project with respect to which:

8 (a) A residential homeowner paid the prime residential contractor
9 for goods or services supplied by the potential lien claimant;

10 (b) The prime residential contractor failed to pay the potential
11 lien claimant's contract price for such goods or services; and

12 (c) The potential lien claimant recorded or otherwise pursued a
13 collection action or claim of lien against the homeowner in the
14 previous three years;

15 the potential lien claimant shall have no lien right upon the
16 improvement for labor, professional services, materials, or equipment
17 furnished on behalf of the homeowner at the instance of the prime
18 residential contractor or construction agent employed by a prime
19 residential contractor unless, before supplying any service, materials,
20 or equipment that may be subject to a lien under this chapter, the
21 potential lien claimant has provided written notice to the homeowner of
22 all circumstances surrounding the filing, pursuit, and resolution of
23 such claim, and the homeowner, in writing, affirmatively instructs the
24 potential lien claimant to supply the requested service, materials, or
25 equipment.

26 NEW SECTION. Sec. 3. A new section is added to chapter 60.04 RCW
27 to read as follows:

28 (1) Any potential lien claimant may give notice as provided in
29 subsections (2) and (3) of this section if the potential lien claimant
30 has not received a payment from a prime residential contractor: (a)
31 Within thirty days after the date required by their contract, invoice,
32 or purchase order; or (b) if no due date is specified in the contract,
33 invoice, or purchase order, within sixty days after the goods or
34 services specified in the contract, invoice, or purchase order have
35 been provided or delivered.

36 (2) The notice shall be signed by the potential lien claimant or
37 some person authorized to act on his or her behalf.

1 (3) The notice shall be in writing and shall be mailed or delivered
2 to the residential homeowner with a copy mailed or given to the prime
3 residential contractor within fourteen days after the date provided for
4 in subsection (1) of this section. The notice shall be given by:

5 (a) Mailing the notice to the residential homeowner and prime
6 residential contractor using any mail service by which a record of the
7 date of mailing is authenticated by the United States post office; or

8 (b) Delivering or serving the notice personally and obtaining
9 evidence of delivery in the form of a receipt or other acknowledgment
10 signed by the residential homeowner and prime residential contractor or
11 an affidavit of service.

12 (4) The notice shall state in substance and effect as follows:

13 (a) The person, firm, trustee, or corporation filing the notice has
14 furnished labor, professional services, materials, or equipment for
15 which a lien is given by this chapter;

16 (b) The name of the prime residential contractor ordering the same;

17 (c) A common or street address of the real property being improved
18 or the legal description of the real property;

19 (d) The name, business address, and telephone number of the lien
20 claimant; and

21 (e) The sums due and to become due, for which a potential lien
22 claimant may claim a lien under this chapter.

23 The notice may contain additional information but shall be in
24 substantially the following form:

25 NOTICE TO RESIDENTIAL HOMEOWNER OF LATE PAYMENT

26 (Authorized by RCW)

27 TO:

28 (Name of Homeowner)

29

30 (Street Address)

31

32 (City) (State) (Zip)

33 AND TO:

34 (Prime Residential Contractor)

35 (Name of Laborer, Professional, Materials, or Equipment Supplier)

1 whose business address is, did at the property located
2 at

3 (Check appropriate box) () perform labor () furnish professional
4 services () provide materials () supply equipment as follows:

5
6
7

8 which was ordered by
9 (Name of Person)

10 whose address was stated to be
11

12 The amount owing to the undersigned according to
13 contract or purchase order for labor, supplies, or equipment
14 (as abovementioned) is the sum of Dollars
15 (\$). Said sums became due and owing as of
16
17 (State Date)

18,

19 You are hereby notified that said amount owing is currently past
20 due by not less than fourteen days.

21 IMPORTANT

22 Failure to rectify this payment deficiency may subject the residential
23 homeowner to a lien pursuant to RCW 60.04.021.

24 (5)(a) If the potential lien claimant presents to the department
25 evidence that the lien claimant has commenced a lien or other
26 collection action against the contractor pursuant to RCW 60.04.021(2),
27 and the homeowner presents to the department, under penalty of perjury
28 (i) a notarized statement stating that the homeowner paid the
29 contractor for all amounts the contractor informed the homeowner were
30 owed to the lien claimant, and (ii) the original or a true and accurate
31 copy of the notice provided to the homeowner pursuant to this section,
32 the department shall notify the prime residential contractor.

33 (b) Within five business days of receipt of such notice from the
34 department, the contractor shall provide to the department (i) a surety
35 bond or other good and sufficient security with the department in the

1 amount of claimed deficient payment, or (ii) a notarized statement,
2 submitted under penalty of perjury: (A) Stating that the contractor
3 had not received full payment from the homeowner of amounts billed by
4 the contractor for the lien claimant; or (B) stating that the
5 contractor had provided the homeowner, no later than the date payment
6 for the lien claimant was received from the homeowner, that the
7 contractor had provided the homeowner with a written notice that the
8 contractor did not intend to fully pay the lien claimant; and (C)
9 providing written documentation supporting the statements made in
10 either (A) or (B) of this subsection (5)(b)(ii).

11 (6) The department shall suspend the registration of any prime
12 residential contractor while sufficient security as required under
13 subsection (5) of this section is not filed. The effective date of the
14 suspension shall be the date that the contractor completes work on all
15 construction projects in progress on the date of the notice from the
16 department as provided for under subsection (5) of this section. The
17 department shall establish by rule and charge a reasonable fee to cover
18 the costs of processing documents submitted to the department under
19 this section.

20 (7) For the purposes of this section, the notice is received when
21 any of the following occur: The day of actual receipt of the notice by
22 personal service, or registered or certified mail; or three days after
23 mailing by registered or certified mail, excluding Saturdays, Sundays,
24 or legal holidays.

25 **Sec. 4.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
26 as follows:

27 Except as provided under subsection (3) of this section, every
28 person claiming a lien under RCW 60.04.021 shall file for recording, in
29 the county where the subject property is located, a notice of claim of
30 lien not later than ninety days after the person has ceased to furnish
31 labor, professional services, materials, or equipment or the last date
32 on which employee benefit contributions were due. (~~The notice of~~
33 ~~claim of lien:~~)

34 (1) The notice of claim of lien shall state in substance and
35 effect:

36 (a) The name, (~~phone~~) telephone number, and address of the
37 claimant;

1 (b) The first ~~((and))~~ date on which the claimant began to perform
2 labor, provide professional services, or supply material or equipment
3 or the first date on which employee benefits became due;

4 (c) The last date on which the labor, professional services,
5 materials, or equipment was furnished or employee benefit contributions
6 were due;

7 ~~((+e))~~ (d) The name of the person indebted to the claimant;

8 ~~((+d))~~ (e) The street address, legal description, or other
9 description reasonably calculated to identify, for a person familiar
10 with the area, the location of the real property to be charged with the
11 lien;

12 ~~((+e))~~ (f) The name of the owner or reputed owner of the property,
13 if known, and, if not known, that fact shall be stated; ~~((and~~

14 ~~(+f))~~ (g) The principal amount for which the lien is claimed,
15 excluding any interest, late fees, costs, attorneys' fees, or similar
16 charges; and

17 (h) Whether the claimant is the assignee of the claim.

18 (2) The notice of claim of lien shall be signed by the claimant or
19 some person authorized to act on his or her behalf who shall
20 affirmatively state they have read or heard and understand the notice
21 of claim of lien ((and)), believe the ((notice of claim of lien))
22 contents to be true and correct, and the lien is not frivolous and is
23 not clearly excessive, under penalty of perjury, and shall be
24 acknowledged as set forth in the form below, or pursuant to chapter
25 64.08 RCW. If the lien has been assigned, the name of the assignee
26 shall be stated. Where an action to foreclose the lien has been
27 commenced such notice of claim of lien may be amended as pleadings may
28 be by order of the court insofar as the interests of third parties are
29 not adversely affected by such amendment. A claim of lien
30 substantially in the following form shall be sufficient:

31 CLAIM OF LIEN

32, claimant, vs, name of person indebted
33 to claimant:

34 Notice is hereby given that the person named below claims a
35 lien pursuant to chapter ~~((64.04))~~ 60.04 RCW. In support of
36 this lien the following information is submitted:

37 1. NAME OF LIEN CLAIMANT:

1 TELEPHONE NUMBER:
2 ADDRESS:

3 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,
4 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR
5 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

6 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
7

8 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
9 CLAIMED (Street address, legal description or other information
10 that will reasonably describe the property):
11
12
13

14 5. NAME OF THE OWNER OR REPUTED OWNER (If not known
15 state "unknown"):

16 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
17 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
18 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
19 FURNISHED:
20

21 7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

22 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO
23 STATE HERE:
24

25
26 , Claimant
27
28
29 (Phone number, address, city, and
30 state of claimant)

31 STATE OF WASHINGTON, COUNTY OF
32, ss.

33, being sworn, says: I am the claimant (or attorney of
34 the claimant, or administrator, representative, or agent of the

1 trustees of an employee benefit plan) above named; I have read or heard
2 and understand the foregoing claim, read and know the contents thereof,
3 and believe the same to be true and correct and that the claim of lien
4 is not frivolous and is made with reasonable cause, and is not clearly
5 excessive under penalty of perjury.

6
7 Subscribed and sworn to before me this day of
8

9 (3) The period provided for recording the claim of lien is a period
10 of limitation and no action to foreclose a lien shall be maintained
11 unless the claim of lien is filed for recording within the ninety-day
12 period stated. The lien claimant shall give a copy of the claim of
13 lien to the owner or reputed owner by mailing it by certified or
14 registered mail or by personal service within fourteen days of the time
15 the claim of lien is filed for recording. Failure to do so results in
16 a forfeiture of any right the claimant may have to attorneys' fees and
17 costs against the owner under RCW 60.04.181.

18 (4) A lien claimant that, for any reason, includes any interest,
19 late fee, court cost, attorneys' fees, or similar charges as part of
20 the principal amount for which the lien is claimed shall be deemed to
21 have waived any right under contract or otherwise to such charges, and
22 shall also forfeit any right the claimant may have to attorneys' fees
23 and costs against the owner under RCW 60.04.181.

24 **Sec. 5.** RCW 60.04.250 and 1990 c 81 s 1 are each amended to read
25 as follows:

26 The department of labor and industries shall prepare master
27 documents that provide informational material about:

28 (1) Construction lien laws and available safeguards against real
29 property lien claims. The material shall include methods of protection
30 against lien claims, including obtaining lien release documents,
31 performance bonds, joint payee checks, the opportunity to require
32 contractor disclosure of all potential lien claimants as a condition of
33 payment, and lender supervision under RCW 60.04.200 and 60.04.210. The
34 material shall also include sources of further information, including
35 the department of labor and industries and the office of the attorney
36 general.

1 (2) The basics of lien law relating to owner-occupied residential
2 improvements and new construction projects. Before any building permit
3 may be issued for the construction of a new owner-occupied
4 single-family residence or for the improvement to an owner-occupied
5 single-family residence for an amount in excess of one thousand
6 dollars, if the construction will involve the services of a prime
7 contractor, the permit issuing agency shall not issue any permit until
8 the homeowner has personally, and not through an agent, acknowledged
9 receipt of the document. When the homeowner completes the document by
10 making selections, as indicated in the document, and submits it to the
11 agency, the permit issuing agency shall maintain a copy of the
12 completed document in the file of the permit issuing agency relating to
13 the homeowner's permit application. The document shall be in
14 substantially the following form and shall also include information
15 describing the scope and limits of state contractor bonding
16 requirements, the provisions of this act, and the availability of
17 further information, including the department of labor and industries
18 and the office of the attorney general.

19 Dear Homeowner:

20 The construction work for which you are contracting can subject you
21 to significant financial responsibilities that may be affected by the
22 actions of others. For example, if your contractor fails to pay
23 subcontractors, suppliers, or laborers or neglects to make other
24 legally required payments, those who are owed money can file a lien
25 against your property for payment, even if you have paid your
26 contractor in full. Anyone filing a valid lien claim may force the
27 sale of your property to recover the unpaid amount. This is true if
28 you have hired a contractor to build a new home or are buying a newly
29 built home. It is also true when you remodel or improve your property.

30 People who supply materials or labor ordered by your contractor are
31 permitted by law to file a lien only if they do so within ninety days
32 of cessation of performance or delivery of materials. The time frame
33 is spelled out in RCW 60.04.091.

34 If you enter into a contract to buy a newly built home, you may not
35 receive a notice of a lien based on a claim by a contractor or material
36 supplier. You should inquire of your lender and title insurer about
37 title insurance coverage for liens that may arise from the construction
38 of your home, but that are not recorded until after you take possession

1 of your home. Be aware that a lien may be claimed even though you have
2 not received a notice. Before making final payment on the project,
3 obtain a completed lien release form from each contractor and material
4 supplier. A sample of this release of lien form is available from the
5 department of labor and industries, contractor registration section.

6 You have final responsibility for seeing that all bills are paid
7 even if you have paid your contractor in full.

8 If you are dealing with a lending institution, ask your loan
9 officer what precautions the lending institution takes to verify that
10 subcontractors and material suppliers are being paid when mortgage
11 money is paid to your contractor. You may want to request lender
12 supervision if your lending institution is providing interim or
13 construction financing.

14 If you receive a notice to enforce a lien, take the notice
15 seriously. Let your contractor know you have received the notice.
16 Find out what arrangements are being made to pay the sender of the
17 notice.

18 When in doubt, or if you need more details, consult your attorney.
19 When and how to pay your contractor is a decision that requires serious
20 consideration. Washington law, RCW 18.27.114, requires contractors to
21 give you this disclosure statement if your contract exceeds one
22 thousand dollars.

23 (NOTE: A lien claimant must, under RCW 60.04.091, mail by certified or
24 registered mail or by personal service a copy of the claim of lien to
25 the owner within fourteen days of the time the lien is recorded. While
26 an action is ongoing, the law, RCW 60.04.151, allows an owner to
27 withhold from this prime residential contractor the amount of money for
28 which a claim is recorded by a subcontractor, supplier, or laborer.)

29 More information about contractors is available by visiting the
30 department of labor and industries on the Internet at
31 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor
32 registration hotline at 1-800-647-0982. You may also call your local
33 department of labor and industries office. See listings under
34 "Washington state of" in the government section or the white pages of
35 the telephone book.

36 Signed by (property owner):
37 Date signed:

1 **Sec. 6.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read
2 as follows:

3 (1) Every contractor shall register with the department.

4 (2) It is a gross misdemeanor for any contractor to:

5 (a) Advertise, offer to do work, submit a bid, or perform any work
6 as a contractor without being registered as required by this chapter;

7 (b) Advertise, offer to do work, submit a bid, or perform any work
8 as a contractor when the contractor's registration is suspended or
9 revoked;

10 (c) Use a false or expired registration number in purchasing or
11 offering to purchase an advertisement for which a contractor
12 registration number is required; or

13 (d) Transfer a valid registration to an unregistered contractor or
14 allow an unregistered contractor to work under a registration issued to
15 another contractor.

16 (3) It is not unlawful for a general contractor to employ an
17 unregistered contractor who was registered at the time he or she
18 entered into a contract with the general contractor, unless the general
19 contractor or his or her representative has been notified in writing by
20 the department of labor and industries that the contractor has become
21 unregistered.

22 (4) All (~~misdemeanor~~) actions under this chapter shall be
23 prosecuted in the county where the infraction occurs.

24 (5) A person is guilty of a separate gross misdemeanor for each day
25 worked if, after the person receives a citation from the department,
26 the person works while unregistered, or while his or her registration
27 is suspended or revoked, or works under a registration issued to
28 another contractor. A person is guilty of a separate gross misdemeanor
29 for each worksite on which he or she violates subsection (2) of this
30 section. Nothing in this subsection applies to a registered
31 contractor.

32 (6) The director by rule shall establish a two-year audit and
33 monitoring program for a contractor not registered under this chapter
34 who becomes registered after receiving an infraction or conviction
35 under this chapter as an unregistered contractor. The director shall
36 notify the departments of revenue and employment security of the
37 infractions or convictions and shall cooperate with these departments

1 to determine whether any taxes or registration, license, or other fees
2 or penalties are owed the state.

3 **Sec. 7.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read
4 as follows:

5 (1) Each applicant shall file with the department a surety bond
6 issued by a surety insurer who meets the requirements of chapter 48.28
7 RCW in the sum of twelve thousand dollars if the applicant is a general
8 contractor and six thousand dollars if the applicant is a specialty
9 contractor. If no valid bond is already on file with the department at
10 the time the application is filed, a bond must accompany the
11 registration application. The bond shall have the state of Washington
12 named as obligee with good and sufficient surety in a form to be
13 approved by the department. The bond shall be continuous and may be
14 canceled by the surety upon the surety giving written notice to the
15 director. A cancellation or revocation of the bond or withdrawal of
16 the surety from the bond automatically suspends the registration issued
17 to the registrant until a new bond or reinstatement notice has been
18 filed and approved as provided in this section. The bond shall be
19 conditioned that the applicant will pay all persons performing labor,
20 including employee benefits, for the contractor, will pay all taxes and
21 contributions due to the state of Washington, and will pay all persons
22 furnishing labor or material or renting or supplying equipment to the
23 contractor and will pay all amounts that may be adjudged against the
24 contractor by reason of breach of contract including negligent or
25 improper work in the conduct of the contracting business. A change in
26 the name of a business or a change in the type of business entity shall
27 not impair a bond for the purposes of this section so long as one of
28 the original applicants for such bond maintains partial ownership in
29 the business covered by the bond.

30 (2) At the time of initial registration or renewal, the contractor
31 shall provide a bond or other security deposit as required by this
32 chapter and comply with all of the other provisions of this chapter
33 before the department shall issue or renew the contractor's certificate
34 of registration. Any contractor registered as of July 1, 2001, who
35 maintains that registration in accordance with this chapter is in
36 compliance with this chapter until the next renewal of the contractor's
37 certificate of registration.

1 (3) Any person, firm, or corporation having a claim against the
2 contractor for any of the items referred to in this section may bring
3 suit upon the bond or deposit in the superior court of the county in
4 which the work was done or of any county in which jurisdiction of the
5 contractor may be had. The surety issuing the bond shall be named as
6 a party to any suit upon the bond. Action upon the bond or deposit
7 brought by a residential homeowner for breach of contract by a party to
8 the construction contract shall be commenced by filing the summons and
9 complaint with the clerk of the appropriate superior court within two
10 years from the date the claimed contract work was substantially
11 completed or abandoned. Action upon the bond or deposit brought by any
12 other authorized party shall be commenced by filing the summons and
13 complaint with the clerk of the appropriate superior court within one
14 year from the date the claimed labor was performed and benefits
15 accrued, taxes and contributions owing the state of Washington became
16 due, materials and equipment were furnished, or the claimed contract
17 work was substantially completed or abandoned. Service of process in
18 an action against the contractor, the contractor's bond, or the deposit
19 shall be exclusively by service upon the department. Three copies of
20 the summons and complaint and a fee adopted by rule of not less than
21 twenty dollars to cover the costs shall be served by registered or
22 certified mail, or other delivery service requiring notice of receipt,
23 upon the department at the time suit is started and the department
24 shall maintain a record, available for public inspection, of all suits
25 so commenced. Service is not complete until the department receives
26 the fee and three copies of the summons and complaint. The service
27 shall constitute service on the registrant and the surety for suit upon
28 the bond or deposit and the department shall transmit the summons and
29 complaint or a copy thereof to the registrant at the address listed in
30 the registrant's application and to the surety within two days after it
31 shall have been received.

32 (4) The surety upon the bond shall not be liable in an aggregate
33 amount in excess of the amount named in the bond nor for any monetary
34 penalty assessed pursuant to this chapter for an infraction. The
35 liability of the surety shall not cumulate where the bond has been
36 renewed, continued, reinstated, reissued or otherwise extended. The
37 surety upon the bond may, upon notice to the department and the
38 parties, tender to the clerk of the court having jurisdiction of the

1 action an amount equal to the claims thereunder or the amount of the
2 bond less the amount of judgments, if any, previously satisfied
3 therefrom and to the extent of such tender the surety upon the bond
4 shall be exonerated but if the actions commenced and pending at any one
5 time exceed the amount of the bond then unimpaired, claims shall be
6 satisfied from the bond in the following order:

7 (a) Employee labor and claims of laborers, including employee
8 benefits;

9 (b) Claims for breach of contract by a party to the construction
10 contract;

11 (c) Registered or licensed subcontractors, material, and equipment;

12 (d) Taxes and contributions due the state of Washington;

13 (e) Any court costs, interest, and (~~attorney's~~ [attorneys'])
14 attorneys' fees plaintiff may be entitled to recover. The surety is
15 not liable for any amount in excess of the penal limit of its bond.

16 A payment made by the surety in good faith exonerates the bond to
17 the extent of any payment made by the surety.

18 (5) The total amount paid from a bond or deposit required of a
19 general contractor by this section to claimants other than residential
20 homeowners must not exceed one-half of the bond amount. The total
21 amount paid from a bond or deposit required of a specialty contractor
22 by this section to claimants other than residential homeowners must not
23 exceed one-half of the bond amount or four thousand dollars, whichever
24 is greater.

25 (6) The prevailing party in an action filed under this section
26 against the contractor and contractor's bond or deposit, for breach of
27 contract by a party to a construction contract, is entitled to costs,
28 interest, and reasonable attorneys' fees. The surety upon the bond is
29 not liable in an aggregate amount in excess of the amount named in the
30 bond nor for any monetary penalty assessed pursuant to this chapter for
31 an infraction.

32 (7) If a final judgment impairs the liability of the surety upon
33 the bond so furnished that there is not in effect a bond in the full
34 amount prescribed in this section, the registration of the contractor
35 is automatically suspended until the bond liability in the required
36 amount unimpaired by unsatisfied judgment claims is furnished.

37 (8) In lieu of the surety bond required by this section the

1 contractor may file with the department a deposit consisting of cash or
2 other security acceptable to the department.

3 (9) Any person having filed and served a summons and complaint as
4 required by this section having an unsatisfied final judgment against
5 the registrant for any items referred to in this section may execute
6 upon the security held by the department by serving a certified copy of
7 the unsatisfied final judgment by registered or certified mail upon the
8 department within one year of the date of entry of such judgment. Upon
9 the receipt of service of such certified copy the department shall pay
10 or order paid from the deposit, through the registry of the superior
11 court which rendered judgment, towards the amount of the unsatisfied
12 judgment. The priority of payment by the department shall be the order
13 of receipt by the department, but the department shall have no
14 liability for payment in excess of the amount of the deposit.

15 (10) The director (~~may~~) shall require an applicant applying to
16 renew or reinstate a registration or applying for a new registration to
17 file a bond of (~~up to three~~) at least two times, but not more than
18 five times the normally required amount, if the director determines
19 that:

20 (a) An applicant, or a previous registration of a corporate
21 officer, owner, or partner of a current applicant, has had in the past
22 five years a total of six final judgments in actions under this chapter
23 involving a residential single-family dwelling on two or more different
24 structures; or

25 (b) The applicant engages in the new construction, repair,
26 alteration, or remodel of the single-family residence or appurtenant
27 garage of any residential homeowner, as defined in RCW 60.04.031(7),
28 and the applicant, or a previous registration of a corporate officer,
29 owner, or partner of a current applicant, or the employee with the
30 greatest executive, management, physical, or actual control over the
31 accounting or disbursement of funds received by the contractor from
32 residential homeowners have been party to a filing instituted pursuant
33 to section 3 of this act, where a claim against the party or parties
34 has been jointly made by a residential homeowner and a potential lien
35 claimant.

36 (11) The director may adopt rules necessary for the proper
37 administration of the security.

1 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2006."

2SSB 5773 - S AMD 358
By Senator Parlette

NOT ADOPTED 03/15/2005

2 On page 1, line 2 of the title, after "homes;" strike the remainder
3 of the title and insert "amending RCW 60.04.031, 60.04.021, 60.04.091,
4 60.04.250, 18.27.020, and 18.27.040; adding a new section to chapter
5 60.04 RCW; and providing an effective date."

--- END ---